

RULE XVII.
CITIZEN COMPLAINT PROCEDURE

Section 1. CITIZEN COMPLAINT DEFINED.

- (a) A citizen complaint is a written statement filed by an aggrieved person (complainant) that alleges conduct by a member of the Fire or Police Department that the complainant believes is inappropriate and that meets the requirements of sections 1 through 3. The complaint shall be signed by the complainant and shall be sworn to under oath or affirmation declaring that the contents of the complaint are true and correct to the best of the complainant's knowledge. The complaint must be notarized by a notary public.
- (b) Statements that meet the requirements of section 1(a) may be attached to the complaint.
- (c) The Board shall publish a standard complaint in blank form that can be obtained from the Office of the Fire and Police Commission or from the Board's website, *www.milwaukee.gov/fpc*. The Board shall not refuse unreasonably to accept a complaint that conforms to the requirements of law and this Rule solely because the complaint is not submitted on such a form.

Section 2. AGGRIEVED PERSON DEFINED.

An aggrieved person is a person who has been injured by, or witnesses, misconduct of a member of the Fire or Police Department. The personal representative of the estate of an aggrieved person may file a complaint on behalf of a decedent.

Section 3. CONTENTS OF COMPLAINT.

The complaint shall state the following: (a) the full name, street address, and telephone number of the complainant; (b) the date, approximate time and location of the conduct giving rise to the

alleged misconduct set forth in the complaint; and, (c) to the extent known by the complainant, the name, badge number, race, sex, or other identifying information regarding the accused member or members.

- (a) Complaints filed pursuant to Wis. Stat. §62.50(19) must contain facts, which set forth the actions of the accused person or persons that the complainant contends constitute grounds for removal of the accused from the department, specifically indicating the individual acts of each member accused giving rise to the filing of the complaint.
- (b) Complaints filed pursuant to Milwaukee City Charter §22-10 must contain facts, which set forth the actions of the accused person or persons that the complainant contends constitute grounds for discipline, specifically indicating the individual acts of each member accused giving rise to the filing of the complaint.

Section 4. FILING AND RECEIPT OF COMPLAINT.

- (a) The complaint must be personally delivered or mailed to the Fire and Police Commission, City Hall, Room 706, 200 East Wells Street, Milwaukee, WI, 53202.
- (b) Upon proper filing of the complaint, an investigation shall be initiated. The Executive Director will determine if the complaint meets the procedural requirements of sections 1 through 3. If the complaint does not meet the requirements of 1 through 3, the Executive Director shall notify the complainant in writing, within seven (7) days of the filing of the complaint, that the complaint will not be processed and the reasons the complaint will not be processed. Notification that the complaint does not meet the requirements of 1 through 3 does not preclude a complainant from refiling a complaint or amending his or her complaint.
- c) Complaints that meet the requirements of sections 1 through 3 above will be forwarded to the Committee

on Rules and Complaints for review and appropriate action in order to make a recommendation as to whether the Commission has jurisdiction over the complaint under either Wis. Stat. §62.50(19) and/or Milwaukee City Charter §22-10 and the accused member or members.

Section 5. JURISDICTION AND FURTHER PROCEEDINGS.

- (a) Within thirty (30) days after the filing of the complaint, the Committee on Rules and Complaints will recommend to the Board, and the Board by majority vote, will take one of the following actions:
 - (i) grant jurisdiction under Wis. Stat. §62.50(19) and/or Milwaukee City Charter §22-10;
 - (ii) dismiss the complaint;
 - (iii) place the matter on hold in committee to give staff an opportunity to obtain additional information.
- (b) If the Board dismisses the complaint, the complainant will be advised in writing of the dismissal and the reason(s) for the dismissal.
- (c) Within five (5) days of granting jurisdiction, the Board shall serve on the accused member, pursuant to Wis. Stat. § 62.50(15), a Notice of Complaint indicating the department rule and/or standard operating procedure that is alleged to have been violated, a copy of the complaint, and notification of a trial date scheduled pursuant to Wis. Stat. §62.50(14). Written notification of the trial date and a copy of the Notice of Complaint will be served on the complainant by mail, sent to the address listed in the complaint unless the Board is notified in writing by the complainant of a change of address.
- (d) Upon request by the complainant, the Board or Hearing Examiner may allow a complainant to be

represented by an advocate for any part of the proceedings.

Section 6. CONCILIATION

For matters that the Board has granted jurisdiction, the Board may, on a case-by-case basis, recommend to the parties that they avail themselves of conciliation. The purpose of conciliation is to provide an informal means by which the complainant and the accused can discuss the matter and potentially reach a resolution without trial. Conciliation will only occur if the Board recommends it and both parties agree, in writing, to conciliate the matter. Conciliation will proceed as follows:

- (a) Written notification of the date, time, and place of the conciliation conference will be sent at least ten (10) days prior to the conference date. A conciliation conference will be conducted within thirty (30) days of receipt of written agreement by both parties to the conciliation process, unless the parties agree to schedule the conference at a later date;
- (b) The conciliation conference will be conducted by the Executive Director or the Hearing Examiner. Attendance by both the complainant and the accused is mandatory. Either party may be accompanied by an attorney or advocate. Statements made during the course of the conciliation conference are not admissible at a subsequent trial;
- (c) If an accused member agrees to participate in a conciliation conference and fails to appear as scheduled without good cause, the accused member's failure to appear may be referred to the chief of the respective department for investigation and possible disciplinary action;
- (d) If an agreement is reached at the conciliation conference, both parties will be asked to sign a statement of resolution indicating that the dispute has been resolved and that the matter may be dismissed. If the resolution requires further action by either party,

the statement of resolution will specify the action required and state that, upon completion of the action required, the matter is to be dismissed. The person conducting the conciliation conference will notify the Board when the required action has been completed and the matter is dismissed;

- (e) If no agreement is reached as a result of the conciliation, the matter will be scheduled for a pretrial conference or trial.

Section 7. ADJOURNMENT OF TRIAL.

Either party shall have a right to an adjournment not to exceed 15 days in accordance with Wis. Stat. §62.50(16). Any request for an additional adjournment of the trial date should be made in writing, within a reasonable period of time, and must state the reasons for the request. The Executive Director or Hearing Examiner may grant a request for an adjournment upon the showing of good cause. Factors to be considered in determining whether good cause exists are: the reason for the requested adjournment; prejudice to the other party; and any other circumstances or facts that may be appropriate.

Section 8. PRETRIAL CONFERENCE.

The Board may require that a pretrial conference be conducted by the Hearing Examiner prior to trial. At the pretrial conference, the Hearing Examiner will address and establish, through the execution of a scheduling/pretrial order, the following:

- (a) dates for filing and exchanging witness lists, exhibit lists, and copies of exhibits;
- (b) a determination of the issues to be addressed at trial;
- (c) rescheduling of a trial date; and
- (d) any other matter that the Hearing Examiner deems appropriate.

Failure of either party to file witness lists, exhibit lists, and/or copies of proposed exhibits according to the scheduling order, unless an

extension is granted in writing, may result in denial of the right to call witnesses or present exhibits.

Section 9. TRIAL BEFORE THE EXAMINER PROCEDURE.

The Hearing Examiner is authorized to conduct trials. These trials will be videotaped. The procedure and evidentiary provisions of Rule XV governing trials before the Board will also apply to trials before the Hearing Examiner, except as otherwise noted in this rule. Within thirty (30) days after the close of the proceedings, the Hearing Examiner will provide to the parties a report summarizing the evidence presented, as well as proposed findings of fact, conclusions of law and a recommended decision on the merits as well as a recommended penalty, if applicable. Within thirty (30) calendar days after the mailing the report/recommendation to the parties, either party may file a response to the Hearing Examiner's report/recommendation. The Board will meet on a date scheduled thereafter, having first reviewed the record, and deliberate in closed session. Thereafter, the Board shall decide in open session whether to adopt, modify, or reject the recommendations of the hearing examiner and issue its written decision in the matter.

Section 10. TRIAL BEFORE THE BOARD.

A designated Hearing Examiner will assist at all trials before the Board, and is authorized to make evidentiary rulings, and rule on all legal and procedural matters that arise during the trial. The procedural and evidentiary provisions of Rule XV apply, except as otherwise noted in this rule.

Section 11. TRIAL PROCEDURE.

- (a) Trials are quasi-judicial proceedings to secure the facts in as direct and simple a manner as possible. Wisconsin Rules of Evidence controlling civil cases will apply, but the Hearing Examiner may relax the rules of evidence to assure that relevant facts are elicited during the trial. Hearsay evidence may be admitted at the discretion of the Hearing Examiner provided such evidence is probative.
- (b) The burden of proof is on the complainant to prove the substance of the complaint by a preponderance of the

evidence. The complainant will present witnesses and exhibits first, after which the accused will present his or her case. Cross-examination of witnesses is permitted. Either party may be called as a witness by the other party.

- (c) All trials are open to the public.
- (d) Witnesses may be sequestered at the request of either party, or upon direction of the Board or the Hearing Examiner.
- (e) The Board or Hearing Examiner may adjourn the trial to take additional evidence.

Section 12. FAILURE TO APPEAR AT TRIAL.

If the complainant fails to appear at the trial, the Board may dismiss the complaint, with or without prejudice.

Section 13. TRIAL PROCEDURE. FAILURE TO MEET BURDEN TO RESULT IN DISMISSAL.

If the Board determines that the complainant has not met the burden of proof, the matter will immediately be dismissed and proceedings terminated. A summary of proceedings, findings of fact and decision will be prepared by the Hearing Examiner and signed by Board members who participated in the decision within ten (10) business days after such decision is made. A copy of the written decision will be mailed to each of the parties.

Section 14. TRIAL PROCEDURE. BURDEN MET. DISPOSITIONAL PHASE AND DECISION.

- (a) Prior to commencement of the trial, either before the Hearing Examiner or before the Board, the department will provide the Executive Director of the Fire and Police Commission with a sealed copy of the employment history and performance records of the accused member(s). This file will be retained by the Executive Director and will not be opened or viewed by either the Hearing Examiner or Board members unless a determination has been made that the charges have been

sustained. If the Hearing Examiner recommends, or the Board finds, that the accused violated a department rule or procedure, the Hearing Examiner and/or the Board will review the employment history and performance records of the member(s) or such other personnel records as may be requested. The Board and/or Hearing Examiner will then receive testimony, exhibits, and oral argument from each party concerning disposition. Oral argument will be limited to five (5) minutes for each party.

- (b) If the trial was conducted by the Board, after hearing testimony and argument, the Board will deliberate in closed session. The Board will then announce its decision in open session. A written summary of the proceedings, findings of fact and decision will be prepared by the Hearing Examiner and signed by Board members who participated in the decision within ten (10) business days after the decision is announced. A copy of the decision will be mailed to all parties.

Section 15. DISPOSITIONAL OPTIONS.

If a department member is found guilty of misconduct, the Board has the following dispositional options:

- (a) Suspension without pay in accordance with Wis. Stat. § 62.50;
- (b) Demotion to a lesser rank within the department, with a corresponding decrease in pay and benefits;
- (c) Discharge from the department; or
- (d) Any other disposition as permitted by law.

Section 16. COMPLAINTS FILED WITH POLICE OR FIRE DEPARTMENT.

The Executive Director shall review a complaint investigation when a citizen is dissatisfied with the outcome of an investigation that has been completed by the police or fire department.